

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 777 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to5 No

INDURAI VASANTRAI DHOLAKIA SINCE D/D BY HIS HEIRS

Versus

ISMAILKHAN AMIRKHAN GHORI

Appearance:

Mr. J.R. Nanavati for Petitioners
Respondent unserved

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 26/06/97

ORAL JUDGEMENT

1. The petitioners are the original plaintiffs and respondent is the defendant tenant. It appears that Regular Civil Suit No. 16 of 1982 was filed in the court of Civil Judge, Junior Division, Mangrol, to recover vacant possession of the suit premises from the tenant, inter alia, on the ground that the defendant tenant was in arrears of rent for a period of more than six months and that he has neglected to make the payment of arrears

of rent despite service of notice of demand under Section 12(2) of the said Act. It appears that Civil Judge, Junior Division, Mangrol, by judgment and decree dated 29th of October, 1983, decreed the suit holding that plaintiff was entitled to recover arrears of rent amounting to Rs. 2,225/- and that he was also entitled to recover mesne profit at the rate of Rs. 60/- per month w.e.f. 1st of January, 1982 and directed the defendant to hand over peaceful and vacant possession of the suit premises by 28th of February, 1984.

2. It appears that being aggrieved by the judgment and decree passed by the trial court, the tenant preferred Regular Civil Appeal No. 14 of 1984 in the court of Extra Assistant Judge at Jamnagar and by judgment and decree dated 4th of October, 1990, the learned Extra Assistant Judge allowed the appeal and set aside the judgment and decree for possession passed by the trial court and dismissed the suit of the plaintiff defendant and directed the tenant to deposit entire rent due from him from 1st of August 1977 within one month from the date of the order. The lower appellate court found that landlord has proved that the defendant was a tenant in arrears of rent for a period of six months or more and has neglected to pay rent within a month next after the suit notice was served under Section 12(2) of the Bombay Rent Act. However, on point of determination No.2 he found that defendant tenant has proved that he was ready and willing to pay the rent and that therefore no decree for possession could be passed against the tenant. In the course of his judgment, while discussing the ingredients of Section 12, he held that the rent was payable by month, that there was dispute regarding standard rent or permitted increase, that the defendant was in arrears of rent for a period of six months and more and that notice for determination of tenancy and demanding the arrears of rent under Section 12(2) was served on the tenant but he has neglected to pay the arrears of rent. He actually found that on receiving notice of demand under Sec. 12 (2) of the said Act at Exhibit 26 dated 29th of June, 1979 the defendant tenant did raise dispute regarding the standard rent by filing Civil Misc. Application No. 25 of 1989 in the court of Civil Judge, Junior Division, Mangrol under Section 11 of the said Act on 16th July, 1979 and that despite specific prayer of the tenant to fix interim standard rent, the court did not fix the interim standard rent and, therefore, despite his desire to pay the standard rent, defendant could not pay or deposit the standard rent in court within the stipulated time. In fact, defendant tenant was not able to know as to exactly at what rate he

must deposit the amount of rent and therefore it cannot be said that he was not ready and willing to pay the standard rent despite service of notice under Section 12(2) because dispute of standard rent was already raised under Section 11 (4) of the said Act. On such finding he set aside decree for possession passed by the trial court.

3. Being aggrieved thereby, the present Civil Revision Application is preferred by the landlord.

4. Mr. J.R. Nanavati appearing for the petitioner landlord has submitted that the decision of the lower appellate court is otherwise not vulnerable but that the lower appellate court would have remanded the matter to the trial court for deciding the application for standard rent given by the tenant under Section 11(4) of the said Act and that on fixation of standard rent he could have called upon the tenant to deposit the amount and could have thereafter decided as to whether tenant was actually ready and willing to pay the rent. The Civil Misc. Appeal No. 25 of 1989 which was filed in the Court of Civil Judge, Junior Division, Mangrol under Section 11 of the Bombay Rent Act on 16th of July, 1979 remained undecided. As no interim rent was fixed thereon what happened to that Civil Misc. Application is not known to this court. The respondent tenant is found to be not residing in the premises. In that view of the matter, it would be just and proper to remand the matter to the trial court with direction to restore and revive the Civil Misc. Application No. 25 of 1989 filed by the tenant for fixation of standard rent and to fix the interim rent therein and to call upon the tenant to pay the arrears of rent. In case, the tenant fails to pay up the arrears of rent at the rate fixed by the trial court in such Civil Misc. Application, the court may pass an appropriate order and thereafter the trial court shall restore the suit to file and shall proceed to pass appropriate order as regards decree for possession.

5. In the circumstances, the judgment and decree passed by the lower appellate court dated 4th October, 1990 in Regular Civil Appeal No. 14 of 1984 and the judgment and decree passed by the trial court dated 29th October, 1983 in Regular Civil Suit No. 16 of 1982 are quashed and set aside with direction to the trial court to decide first the aforesaid Civil Misc. Application by fixing interim rent and to call upon the tenant to pay the interim rent accordingly and/or to pay the standard rent accordingly and thereafter the trial court shall decide the question as to whether the tenant was liable

to be evicted under Section 12 of the said Act.

6. In the result, the Civil Revision Application succeeds to the aforesaid extent only and the matter is remanded to the trial court with direction stated hereinabove. Rule is partially made absolute. There shall be no order as to costs.

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